

AMENDED IN ASSEMBLY SEPTEMBER 3, 1999

AMENDED IN SENATE APRIL 12, 1999

SENATE BILL

No. 1232

Introduced by ~~Committee on Revenue and Taxation~~
(~~Senators Chesbro (Chair), Alpert, Bowen, Burton,~~
~~Johnston, and McPherson~~) *Senator Chesbro*

February 26, 1999

An act to amend Section 25205.9 of the ~~Health and Safety Code~~, to amend Section 42886 of, and to add Section 42886.1 to, the ~~Public Resources Code~~, and to amend Sections 8877, 30103.5, 30188, 30436, 43010.1, 43011.1, and 50159 of the ~~Revenue and Taxation Code~~, relating to taxation. 25503.30 of the *Business and Professions Code*, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1232, as amended, ~~Committee on Revenue and Taxation Chesbro. Taxation: State Board of Equalization~~ *Alcoholic beverages: tied-house restrictions.*

The Alcoholic Beverage Control Act contains limitations on sales commonly known as "tied-house" restrictions, which generally prohibit a manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectified, distiller, bottler, importer, or wholesaler from owning any interest in an on-sale or off-sale license, licensee, or licensed premises. Existing law contains various exemptions from this restriction on tied interests, including an exception permitting any winegrower, or its direct or indirect

subsidiaries, as specified, to hold an ownership interest or financial or representative relationship in any on-sale license or the business conducted under that license, provided that certain conditions are met. These conditions include that the on-sale licensee purchases all alcoholic beverages sold and served only from California wholesale licensees, and that none of the persons falling under this exemption have an interest in more than two on-sale licenses.

This bill would permit wine sold under this exemption to be purchased from California winegrowers as well as from California wholesale licensees, and would provide that those direct sales may not involve more than 2 on-sale licenses in which the winegrower or any person holding an interest in the winegrower holds any interest, directly or indirectly, either individually or in combination or together with each other in the aggregate.

~~(1) Existing law requires every generator of hazardous waste to pay an annual generator fee to the State Board of Equalization but exempts, from those fees hazardous materials that are recycled and used onsite, and certain aqueous wastes.~~

~~Existing law provides that a generator who pays a hazardous waste generator inspection fee to a certified unified program agency is eligible for a refund of the generator fee, under specified conditions.~~

~~This bill would revise the computation of the maximum permissible refund.~~

~~(2) Under existing law, tire recycling fees of \$0.25 per tire are required to be paid to the State Board of Equalization.~~

~~This bill would revise the timeframe for reporting and paying these fees.~~

~~(3) Under the Use Fuel Tax Law, the State Board of Equalization is authorized to relieve various penalties imposed pursuant to that law under specified circumstances.~~

~~This bill would make technical corrections in these provisions.~~

~~(4) The existing Cigarette and Tobacco Products Tax Law exempts from taxation the sale or transfer of untaxed cigarettes to law enforcement agencies for use in criminal investigations.~~



~~This bill would also provide an exemption from the tax for tobacco products under similar circumstances, and would also require wholesalers to report to the State Board of Equalization on information regarding purchases, sales, and inventory of tobacco products in the same manner as they are required to report that information to the board regarding cigarettes.~~

~~The bill would also permit cigarettes in packages that fail to conform to federal labeling requirements to be forfeited to the state upon seizure by the board.~~

~~(5) Under existing law, the State Board of Equalization administers and collects both occupational and childhood lead poisoning prevention fees.~~

~~This bill would make clarifying changes in references for “department” and “director” with regard to the childhood lead poisoning prevention fee to mean the State Department of Health Services and the State Director of Health Services in order to conform those provisions with the occupational lead poisoning prevention fee provisions.~~

~~(6) Under the existing Underground Storage Tank Maintenance Fee Law, the State Board of Equalization is authorized to disclose otherwise confidential information obtained from the lessee or operator of an underground storage tank only to the fee payer, and only to a limited extent.~~

~~This bill would authorize the board to disclose the information obtained from the person who sold or provided petroleum to the lessee or operator of the underground storage tank.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes no. State-mandated local program: no.~~

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 25205.9 of the Health and Safety~~
2

3 *SECTION 1. Section 25503.30 of the Business and*
4 *Professions Code is amended to read:*

5 25503.30. (a) Notwithstanding any other provision of
6 this division, a winegrower or one or more of its direct or
7 indirect subsidiaries of which the winegrower owns not



1 less than a 51 percent interest, who manufactures,
2 produces, bottles, processes, imports, or sells wine and
3 distilled spirits made from grape wine or other grape
4 products only, under a winegrower's license or any other
5 license issued pursuant to this division, or any officer or
6 director of, or any person holding any interest in, those
7 persons may serve as an officer or director of, and may
8 hold the ownership of any interest or any financial or
9 representative relationship in, any on-sale license, or the
10 business conducted under that license, provided that,
11 except in the case of a holder of on-sale general licenses
12 for airplanes and duplicate on-sale general licenses for air
13 common carriers, all of the following conditions are met:

14 (1) The on-sale licensee purchases all alcoholic
15 beverages sold and served only from California wholesale
16 licensees.

17 (2) The number of wine items by brand offered for
18 sale by the on-sale licensee that are produced, bottled,
19 processed, imported, or sold by the licensed winegrower
20 or by the subsidiary of which the winegrower owns not
21 less than 51 percent, or by any officer or director of, or by
22 any person holding any interest in, those persons does not
23 exceed 15 percent of the total wine items by brand listed
24 and offered for sale by the on-sale licensee selling and
25 serving that wine. *Notwithstanding paragraph (1), wine*
26 *sold pursuant to this provision may be purchased from a*
27 *California winegrower so long as the wine purchased is*
28 *produced or bottled by, or produced and packaged for,*
29 *the same licensed winegrower that holds an interest in*
30 *the on-sale license and such direct sales do not involve*
31 *more than two on-sale licenses in which the winegrower*
32 *or any person holding an interest in the winegrower holds*
33 *any interest, directly or indirectly, either individually or*
34 *in combination or together with each other in the*
35 *aggregate.*

36 (3) None of the persons specified in this section may
37 have any of the interests specified in this section in more
38 than two on-sale licenses.

39 (b) The Legislature finds that, while this section
40 provides a limited exception for licensed winegrowers,

1 that limited exception is granted for specific purposes,
2 and that it is also necessary and proper that licensed
3 winegrowers maintain the authority granted under this
4 division to sell wine and brandy to any individual
5 consumer or any person holding a license authorizing the
6 sale of wine or brandy.

7 (c) The Legislature finds that it is necessary and
8 proper to require a separation between manufacturing
9 interests, wholesale interests, and retail interests in the
10 production and distribution of alcoholic beverages in
11 order to prevent suppliers from dominating local markets
12 through vertical integration and to prevent excessive
13 sales of alcoholic beverages produced by overly
14 aggressive marketing techniques. The Legislature
15 further finds that the exceptions established by this
16 section to the general prohibition against tied interests
17 must be limited to their express terms so as not to
18 undermine the general prohibition, and the Legislature
19 intends that this section be construed accordingly.

20 ~~Code is amended to read:~~

21 ~~25205.9. (a) On or before June 30 of each year, the~~
22 ~~department shall determine if there are surplus funds in~~
23 ~~the Hazardous Waste Control Account and shall, upon~~
24 ~~appropriation by the Legislature, allocate these surplus~~
25 ~~funds to pay refunds in the following order of priority:~~

26 ~~(1) To pay refunds to generators pursuant to~~
27 ~~subdivision (e).~~

28 ~~(2) To pay refunds to generators pursuant to~~
29 ~~subdivision (d). However, the department shall not pay~~
30 ~~refunds pursuant to subdivision (d) until all applications~~
31 ~~for refunds pursuant to subdivision (e) have first been~~
32 ~~paid.~~

33 ~~(b) The department shall certify the amount of the~~
34 ~~surplus in the Hazardous Waste Control Account to the~~
35 ~~board and shall direct the board to pay refunds to~~
36 ~~generators pursuant to subdivisions (c) and (d) to the~~
37 ~~extent funds permit. If funds are not sufficient to pay all~~
38 ~~the refunds for which the board receives applications~~
39 ~~pursuant to subdivision (h) of Section 25205.5, the~~
40 ~~department shall direct the board to pay refunds~~

~~pursuant to subdivision (e) on a pro rata basis. If funds are sufficient to pay all refunds for which applications are received pursuant to subdivision (h) of Section 25205.5 but not sufficient to pay all refunds for which applications were received by the board pursuant to subdivision (i) of Section 25205.5, the department shall direct the board to pay refunds pursuant to subdivision (d) on a pro rata basis.~~

~~(e) (1) If the department certifies that there are sufficient funds to do so, the board shall issue refunds, in the manner directed by the department pursuant to subdivision (b), to hazardous waste generators who are eligible for refunds pursuant to paragraph (1) of subdivision (h) of Section 25205.5.~~

~~(2) The refund made to a generator pursuant to this subdivision shall not exceed the fee paid by the generator pursuant to Section 25205.5, or exceed the hazardous waste generator inspection fee paid to the certified unified program agency for the previous calendar year, whichever is less.~~

~~(3) The board may issue refunds pursuant to this section only if the department certifies, pursuant to subdivision (b), that funds for these refunds are available.~~

~~(d) (1) If the department certifies that there are sufficient funds to do so, the board shall issue refunds, in the manner directed by the department pursuant to subdivision (b), to hazardous waste generators who are eligible for refunds pursuant to paragraph (1) of subdivision (i) of Section 25205.5.~~

~~(2) The refund made to a generator pursuant to this subdivision shall be equal to the difference between the amount of the generator fee paid by the generator pursuant to Section 25205.5 and the amount the generator would have paid if the amount of hazardous materials transferred to an offsite facility for recycling had been deducted from the total tonnage of hazardous waste generated at the generator's site. However, if a generator receives a refund pursuant to subdivision (e), the generator may not receive a refund pursuant to this subdivision that exceeds the difference between the~~

~~amount of the generator fee paid pursuant to Section 25205.5 and the amount of the refund received pursuant to subdivision (c).~~

~~(3) The board may issue refunds pursuant to this subdivision only if the department certifies, pursuant to subdivision (b), that funds for these refunds are available.~~

~~(c) For purposes of this section, “surplus” means the amount in the Hazardous Waste Control Account on June 30 of each year that is in excess of the reserve required by subdivision (k) of Section 25174.~~

~~SEC. 2. Section 42886 of the Public Resources Code is amended to read:~~

~~42886. (a) The fees remitted pursuant to Section 42885 are due and payable quarterly on or before the 15th day of the month following each quarterly or yearly reporting period.~~

~~(b) A penalty of 20 percent of any fees not paid when due shall be assessed and collected.~~

~~SEC. 3. Section 42886.1 is added to the Public Resources Code, to read:~~

~~42886.1. (a) The board if it deems it necessary in order to ensure payment to or facilitate the collection by the state of the amount of fees, may require returns and payment of the amount of fees for a yearly period.~~

~~(b) On or before the 15th day of the month following each designated yearly period, a return for the preceding designated yearly period shall be filed with the board in the form as the board may prescribe.~~

~~SEC. 4. Section 8877 of the Revenue and Taxation Code is amended to read:~~

~~8877. If the board finds that a person’s failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person’s control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 8801, 8854, and 8876.~~

~~Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.~~

~~SEC. 5. Section 30103.5 of the Revenue and Taxation Code is amended to read:~~

~~30103.5. (a) The tax and surcharge imposed by this part shall not apply to the sale or transfer of untaxed cigarettes or tobacco products to a law enforcement agency for use in a criminal investigation when that sale or transfer is authorized by the board.~~

~~(b) A law enforcement agency authorized by the board to receive or purchase cigarettes or tobacco products as provided in subdivision (a) shall not be required to apply for, or obtain, a license as a distributor pursuant to Section 30140.~~

~~(c) A law enforcement agency making distributions of cigarettes and tobacco products received or purchased under subdivision (a) is not required to collect or remit the tax or surcharge imposed by this part with respect to those authorized distributions.~~

~~SEC. 6. Section 30188 of the Revenue and Taxation Code is amended to read:~~

~~30188. On or before the 25th day of each month, every wholesaler shall file on forms prescribed by the board a report respecting his inventory, purchases, and sales of cigarettes or tobacco products during the preceding month and such other information as the board may require to carry out the purposes of this part.~~

~~SEC. 7. Section 30436 of the Revenue and Taxation Code is amended to read:~~

~~30436. The following property, upon seizure by the board, is hereby forfeited to the State of California:~~

~~(a) Cigarettes or tobacco products transported upon the highways, roads or streets of this state in violation of the provisions of Section 30431 or Section 30432.~~

~~(b) Cigarettes not contained in packages to which are affixed California cigarette tax stamp or meter impressions or tobacco products upon which the tobacco products surtax has not been paid, which are offered for sale, possessed, kept, stored or owned by any person with the intent of the person to sell the cigarettes or tobacco products without payment of the taxes imposed by this part.~~

~~(c) Any cigarette or tobacco product vending machine, together with the cigarettes, tobacco products, money or other contents thereof, which has been loaded in whole or in part with packages of cigarettes which do not have California cigarette tax stamps or meter impressions affixed or tobacco products upon which the tobacco products surtax has not been paid.~~

~~(d) Cigarettes contained in packages to which are affixed California cigarette tax stamps or meter impressions in violation of Section 30163.~~

~~SEC. 8. Section 43010.1 of the Revenue and Taxation Code is amended to read:~~

~~43010.1. Notwithstanding Section 43010, for purposes of the fees administered under Sections 43056 and 43057, “department” means the State Department of Health Services.~~

~~SEC. 9. Section 43011.1 of the Revenue and Taxation Code is amended to read:~~

~~43011.1. Notwithstanding Section 43011, for purposes of the fees administered under Sections 43056 and 43057, “director” means the State Director of Health Services.~~

~~SEC. 10. Section 50159 of the Revenue and Taxation Code is amended to read:~~

~~50159. (a) The board shall provide any information obtained under this part to the State Water Resources Control Board, including any information regarding underground storage tanks containing petroleum.~~

~~(b) The State Water Resources Control Board and the board may utilize any information obtained pursuant to this part to develop data on underground storage tanks containing petroleum within the state. Notwithstanding Section 50161, the State Water Resources Control Board may make this underground storage tank data available to the public.~~

~~(c) The board may disclose otherwise confidential information obtained from the lessee or operator of an underground storage tank, or from the person who sold or provided petroleum to the lessee or operator of the underground storage tank, only to the fee payer and only to the extent that this information is necessary for~~

- 1 ~~assessment, administration, and verification of the~~
- 2 ~~underground storage tank fee.~~

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